

## MINING OPERATION PERMITS

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**House Bill 6388 as introduced**  
**Sponsor: Rep. Gary Howell**  
**Committee: Natural Resources and Outdoor Recreation**  
**Complete to 9-28-22**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 6388 would amend the Natural Resources and Environmental Protection Act (NREPA) by adding two new sections and amending several existing sections, to modify the permit appeals process for certain mining permits and to require coordinated processing of related permits.

**Sections 63102 and 63102b** would be added by the bill. Section 63102 would require that if a person submits an application for a permit required under Part 631 of NREPA (relating to ferrous metal mining), along with one or more other permit applications required elsewhere under NREPA for the same mining operation, the Department of Environment, Great Lakes, and Energy (EGLE) must process all the permits in a coordinated fashion, to the extent feasible based on the specific permit applications submitted. This could include combining public hearings to cover multiple permits. If a combined hearing were scheduled, the hearing notice would have to state the permits being considered at that hearing.

Section 63102b would prescribe the process by which a permit denial, or inaction of a specific permit filed under section 63102, could be appealed by the applicant. An appeal would be started by filing a petition to initiate a coordinated case hearing, as prescribed in the Administrative Procedures Act. If this petition were filed more than 60 days after EGLE's permit inaction or denial, EGLE could reject the petition as being filed in an untimely manner.

Any person aggrieved by an EGLE order, action, or inaction, or by the issuance, denial, revocation, or amendment of a Part 631 mining permit or another permit required under NREPA for the mining operation that was processed as a coordinated permit, could file a petition with EGLE for a contested case hearing. This petition would have to be filed not more than 60 days after the issuance, denial, revocation, or amendment of the mining permit, or issuance of the last permit processed under section 63102, whichever is later.

A petition for a contested case hearing would have to include a statement of the issues proposed to be addressed in the case as well as the specific relief or resolution requested. The petition could also include any of the following information, if known:

- A proposed list of prospective witnesses to be called, including experts, with a brief description of the proposed testimony of or a summary of evidence to be presented by each witness.
- A proposed list of publications, references, or studies to be introduced and relied upon.
- An estimate of time required for the petitioner to present the matter.

Any person could serve timely responses to a filed contested case petition, following response deadlines as established by EGLE. The department would be required to grant a contested case petition if the it finds all of the following:

- The petition raises a material issue of fact in dispute concerning the mining permit or a permit processed under section 63102 that has not been sufficiently evaluated by EGLE.
- EGLE has jurisdiction to make a determination on the disputed material issue of fact.
- There is a reasonable basis underlying a disputed material issue of fact such that a contested case hearing would allow the introduction of information that would help EGLE resolve the issue of fact and make a final decision on the permit.

Within 90 days of a contested case hearing petition's being filed, EGLE would have to make a decision whether to grant the petition. If the petition were not granted, that would be considered the final decision of EGLE, subject to judicial review as outlined in the APA. The bill would have the contested case hearing petition process supersede and replace the contested case rights and procedures that otherwise apply to the permits processed through section 63102.

A contested case hearing under Part 631 and judicial appeal of the final agency action resulting from the hearing would be in accordance with the APA. EGLE would have to provide notice of the hearing and mail copies of the meeting notice to the person requesting the hearing and to the city, village, or township and the county where the proposed mining operation is to be located, as well as to all affected federally recognized Indian tribes in Michigan. Notice of the hearing would have to also be published in a newspaper of local distribution in the area of the mining operation at least 10 days before the hearing.

**Sections 63205, 63209 63219**, which are existing sections of NREPA, would be amended by mirroring the provisions added by the bill for Part 631 relating to the process for filing a petition for a contested case hearing. At present, a mining permit application under Part 632 may be processed in a coordinated fashion with other related permit applications. The bill would require the coordinated processing for the mining permit and related permit applications.

MCL 324.63205, 324.63209, and 324.63219 and proposed MCL 324.63102 and 324.63102b

## **FISCAL IMPACT:**

House Bill 6388 is unlikely to affect costs for the Department of Environment, Great Lakes, and Energy, as contested case hearings are already undertaken for other permits issued by the department in accordance with current law: the procedures in the bill closely resemble those already in place. The bill is unlikely to affect departmental revenues, local government costs, or local government revenues.

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